

SECOND REGULAR SESSION

SENATE BILL NO. 872

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

3172S.011

AN ACT

To repeal sections 168.114, 168.116, 168.118, and 168.120, RSMo, and to enact in lieu thereof four new sections relating to teachers of the public schools.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 168.114, 168.116, 168.118, and 168.120, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 168.114, 168.116, 168.118, and 168.120, to read as follows:

168.114. 1. An indefinite contract with a permanent teacher shall not be terminated [by the board of education of a school district] except for one or more of the following causes:

(1) Physical or mental condition [unfitting him] **making such teacher unfit** to instruct or associate with children;

(2) Immoral conduct;

(3) Incompetency, inefficiency or insubordination in line of duty;

(4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing [him] **such teacher;**

(5) Excessive or unreasonable absence from performance of duties; or

(6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.

168.116. 1. The indefinite contract of a permanent teacher may not be terminated [by the board of education] until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for termination of such contract, notice of a

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

hearing on charges and a hearing [by the board of education] on charges if requested by the teacher.

2. At least [thirty] **one hundred twenty** days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if not removed, may result in charges. Thereafter, both the superintendent, or [his] **the superintendent's** designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

3. Notice of **right to request** a hearing upon charges, together with a copy of charges, shall be served on the permanent teacher [at least twenty days prior to the date of the hearing]. The notice and copy of the charges may be served upon the teacher by certified mail with personal delivery addressed to [him] **the teacher** at [his] **the teacher's** last known address. If the teacher or [his] **the teacher's** agent does not within ten days after receipt of the notice request a hearing on the charges, the board of education **of the school district** may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested by [either] the teacher [or the board of education, it shall take place not less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.], **the superintendent shall forward a copy of the notice to the state board of education. Within five days after receiving this notice of hearing, the state board of education shall provide a list of five prospective, impartial hearing officers. Each person on the list shall be accredited by a national arbitration organization. No one on the list shall be a resident of the school district. Within seven days of receipt of the list, the board of education of the school district and the teacher, or their legal representatives, shall alternately strike one name from the list until only one name remains. The board of education of the school district shall proceed first with the striking. The state board of education shall promulgate uniform standards and rules of procedure for such hearings. Such rules and regulations shall, at a minimum, provide for:**

(1) **Discovery of names and addresses of persons who may be called as expert witnesses at the hearing. The omission of any such name shall result in a preclusion of the testimony of such witness in the absence of the showing of good cause and the express permission of the hearing officer;**

(2) **Written interrogatories; and**

(3) **The production of relevant documents.**

4. **The school district shall pay the per diem allowance for the hearing officer, not to exceed four hundred dollars, and the expenses of the hearing officer.**

5. On the filing of charges in accordance with this section, the board of education **of the school district** may suspend the teacher from active performance of duty until a

decision is rendered by the [board of education] **hearing officer** but the teacher's salary **and benefits** shall be continued during such suspension. If a decision to terminate a teacher's employment [by the board of education] is appealed, and the decision is reversed, the teacher shall be paid [his] **the teacher's** salary lost during the pending of the appeal.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

168.118. If a hearing is requested on the termination of an indefinite contract it shall be conducted by the [board of education] **hearing officer** in accordance with the following provisions:

(1) The hearing shall be public **unless closed at the request of the teacher, and shall be scheduled not less than thirty nor more than forty-five days from the date of selection of the hearing officer, unless the period is shortened or extended by mutual agreement of the teacher and the board of education of the school district;**

(2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;

(3) Testimony at hearings shall be on oath or affirmation administered by the [president of the board of education] **hearing officer**, who for the purpose of hearings held [under sections 168.102 to 168.130] **pursuant to this section** shall have the authority to administer oaths;

(4) The [school board] **hearing officer** shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077, RSMo, and shall do so on [its own] **the** motion or at the request of the **administration or the** teacher against whom charges have been made. The [school board] **hearing officer** shall hear testimony of all witnesses named by the **administration and the** teacher; however, the [school board] **hearing officer** may limit the number of witnesses to be subpoenaed on behalf of the **administration or the** teacher to not more than ten;

(5) The board of education **of the school district** shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the conclusion thereof, furnish **the hearing officer**, the board of education **of the school district** and the teacher, at no cost to **the hearing officer or** the teacher, with a copy of the transcript of the record, which shall be certified by the stenographer to be

complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the [board] **hearing officer** is taken by the teacher **or the board of education of the school district**;

(6) All costs of the hearing shall be paid by the school board **of education of the school district** except the cost of counsel for the teacher;

(7) [The decision of the board of education resulting in the demotion of a permanent teacher or the termination of an indefinite contract shall be by a majority vote of the members of the board of education and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished the teacher within three days thereafter.] **No later than thirty days after the conclusion of the hearing, the hearing officer shall make a decision as to whether or not the teacher shall be dismissed and shall deliver copies of the decision to both the teacher and the board of education of the school district. The hearing officer shall also have the authority to decide that a teacher shall be given appropriate discipline, but not be dismissed. In the case of a charge of incompetency, inefficiency, or insubordination in the line of duty, the hearing officer shall also have the option of ordering an extension of the period in which the superintendent and the teacher shall meet and confer in an effort to resolve the matter as provided in subsection 2 of section 168.116. The decision of the hearing officer is final unless appealed as provided in section 168.120.**

168.120. 1. The teacher **or the board of education of the school district** shall have the right to appeal from the decision of the [board of education] **hearing officer** to the circuit court of the county where the employing school district is located. The appeal shall be taken within fifteen days after service of a copy of the decision of the [board of education upon the teacher] **hearing officer**, and if an appeal is not taken within the time, then the decision of the [board of education] **hearing officer** shall become final.

2. The appeal may be taken by filing notice of appeal with the board of education **of the school district**, whereupon the board of education **of the school district**, under its certificate, shall forward to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the [board of education] **hearing officer**, which shall thereupon become the record of the cause. Such appeal shall be heard as provided in chapter 536, RSMo.

3. Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the board of education **of the school district**, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The board of education **of the school district** shall make available, to the parties, copies of any

transcript prepared and filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the board of education filed as a part of the transcript on appeal shall be certified back to the board of education **of the school district** by the appellate court. In all appeals from the board of education **of the school district** or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit court and appellate courts shall have precedence over all cases except election contests.

4. If the circuit court finds for the teacher, [he] **the teacher** shall be restored to permanent teacher status and shall receive compensation for the period during which [he] **the teacher** may have been suspended from work, and such other relief as may be granted by the court.

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